

**CONTRACT TERMS AND CONDITIONS
FOR
MISCELLANEOUS SERVICES & EQUIPMENT PURCHASES**
Under Purchase Orders

Rev. 112904, Doc. #1002

4.1 EQUIPMENT FURNISHED: Any equipment or item furnished is to be a new and unused model currently in production. All accessories and services necessary for proper functioning on delivery, are assumed to be included in this agreement though not specifically mentioned. All assemblies, sub-assemblies and component parts for all equipment or items specified are to be standard and interchangeable.

4.2 LEGAL STATUS: If the Contractor is a corporation or other legal business entity, it must have a current license to do business in the State of Connecticut that is on file with the Connecticut Secretary of State's office, or it must be organized under the laws of the State of Connecticut and current in terms of its required filings. Certification acceptable by Purchasing Agent must, when required, be filed with the Purchasing Agent before performance of contract is started.

4.3 RECYCLING POLICY: The City of Hartford is committed to protecting the environment and managing solid waste. The City requests that its vendors eliminate all non-essential packaging that may be used in the delivery process.

4.4 INSURANCE REQUIREMENTS: A certificate of insurance, if requested on the face of the Purchase Agreement, must be presented to the City in order for this agreement to take effect. The certificate must name the City as an additional insured on the face of the document and must bear the original signature of an authorized Agent for the Producer. All policies must be written on a "per occurrence" basis. The Contractor is responsible for the cost of maintaining such insurance throughout the duration of the project. Insurance requirements are detailed in document #1008, Miscellaneous Services Insurance Requirements.

4.5 LIQUIDATED DAMAGES: Time is of the essence. Provisions of a final agreement must be completed by the dates indicated. Liquidated damages will be computed from costs incurred and/or revenues lost as a result of missing this deadline.

4.6 TERMINATION: The City may at any time, and for any reason, in its sole discretion, direct the discontinuance of the services and work contemplated under this Agreement for a period of time. Such direction shall be in writing and shall specify the period during which the work shall be discontinued. The work shall be resumed on the dates specified in such direction, or upon such other date as the City may thereafter specify in writing. The period during which such work shall have been discontinued shall be deemed added to the time for performance. In the event that the City directs the discontinuance of the services hereunder for a period of time in excess of six (6) months, through no fault of the Contractor, the parties may negotiate and adjustment in the fees payable hereunder due to a rise in the cost of performance. Stoppage of work under this article shall not give rise to any claim against the City.

4.6.1 The City may at any time and for any reason, with or without cause, in its sole discretion, terminate this Agreement by written notice specifying the termination date, which shall be not less than seven (7) days from the date such notice is given. In the event of such termination, services shall be paid for in such amount as shall compensate the Contractor for the portion of the work satisfactorily performed prior to termination. Such amount shall be fixed by the City after consultation with the Contractor, and shall be subject to audit by the City's Comptroller. Termination under this section shall not give rise to any claim against the City for damages or for compensation in addition to that provided hereunder.

4.7 INTENT: It is the intent of this Agreement to secure the services of the Contractor or a duly authorized and competent representative or representatives of the Contractor acceptable to the City. Failure of the Contractor for any reason to make the service of such a person or persons available to the City to the extent necessary to perform the services required skillfully and promptly shall be cause for termination of this agreement. All persons engaged in the work required under this Agreement shall be authorized or permitted under State law and the ordinances of the City to perform such services, as required by law.

4.8 ASSIGNMENT: The Contractor shall not assign or subcontract this Agreement or any of the services to be performed by it hereunder without prior consent of the City in writing. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors as it is for the acts and omissions of people directly employed by it. The Contractor shall require any subcontractor approved by the City to agree in its contract to observe and be bound by all obligations and conditions of this Agreement to which Contractor is bound.

4.9. REJECTED WORK OR MATERIALS: Rejected equipment, items, commodities, etc. must be removed by the Contractor from City of Hartford premises within 48 hours at the Contractor's expense. Immediate removal may be required when safety or health issues are present.

4.10 DEFAULT: When the City shall have reasonable grounds for believing that:

- A. The Contractor will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or
- B. A meritorious claim exists or will exist against the Contractor or the City arising out of the negligence of the Contractor, or of the Contractor's subcontractors, or the Contractor's breach of any provision of this Agreement;

then the City may withhold payment of any amount otherwise due and payable to the Contractor hereunder. Any amount so withheld may be retained by the City for such period as it may deem advisable to protect the City against any loss and may, after written notice to the Contractor, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and no person shall have any right against the City or claim against the City by reason of the City's failure or refusal to withhold monies. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

In the event the City determines that there has been a material breach by the Contractor of any of the terms of the Agreement, the City has the right, power and authority to terminate this Agreement and to complete the work or any part thereof, and the Contractor shall be obligated to pay the City for any losses, damages, costs and expenses; including attorneys' fees, sustained or incurred thereby. For the purpose of such completion the City may, for itself or for any of its Contractors, take possession of and use or cause to be used any and all documents, plans and specifications or other items that may have been used or drawn up in connection with the performance of this Agreement. This right is in addition to any other right or remedy the City may otherwise have.

In such event, all costs, expenses, losses, damages, attorneys' fees, and any and all other charges incurred by the City under this Agreement shall be charged to the Contractor and deducted and/or paid by the City out of any monies due or payable or to become due or payable under this Agreement to the Contractor if any such cost shall exceed the sum due or to become due to the Contractor, the Contractor shall pay the excess amount to the City. In computing the amounts chargeable to the Contractor, the City shall not be held to a basis of the lowest prices for which the completion of the work or any part thereof might have been accomplished, but it shall charge to the Contractor, and the Contractor shall be liable for all sums actually paid or expenses actually incurred in effecting prompt completion of the work hereunder. The City's rights described herein are in addition to any other rights and remedies provided by law.

Termination under this section shall not give rise to any claim against the City for damages or compensation in addition to that provided hereunder.

4.11 PROTECTION AGAINST ACCIDENTS: On contracts, in the performance of which accidents or injuries may happen to the person or property of another, the Contractor shall place and maintain proper guards for the prevention of accidents. Prevention efforts are to, at minimum, meet OSHA standards.

4.12 INDEMNIFICATION: Contractor shall not assert any claim arising out of any act or omission by any agent, officer or employee of the City in the execution or performance of this Agreement against any such agent, officer or employee.

4.12.1 The Contractor will indemnify the City for any damages or costs to which it may be put by reason of injury to the person or property of another resulting from the performance, non-performance, negligence or carelessness in the performance of the contract or in failure to comply with any provisions of the contract. .

4.12.2 No member of the governing body of the City, and no other officer, employee, or agent of the City shall have any personal interest, direct or indirect, in this Agreement, except as permitted by the Code of Ethics of the City of Hartford; and the Contractor covenants that no person having such interest shall be employed in the performance of this Agreement.

4.12.3 The Contractor expressly agrees to at all times indemnify, defend and save harmless the City of Hartford and its respective officers, agents, and employees on account of any and all demands, claims, damages, losses, infringement of patent rights, litigation, financial costs and expenses, including counsel fees, and compensation arising out of personal injuries (including death), any damage to property, real or personal and any other loss, expense or aggravement directly or indirectly arising out of, related to or in connection with the Project and the work to be performed hereunder by the Contractor, its employees, agents, subcontractors, material suppliers, or anyone directly or indirectly employed by any of them. The Contractor shall and does hereby assume and agree to pay for the defense of all such claims, demands, suits, proceedings and litigation, including costs and attorneys fees. The provisions of this paragraph shall survive the expiration or early termination of this Agreement and shall not be limited by reason of any insurance coverage.

4.13 EQUAL OPPORTUNITY: During the performance of this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, age, sex, sexual orientation, marital status, mental disability, physical disability or national origin.

4.14 PERFORMANCE EVALUATION: The Contractor understands that during the course of and at the conclusion of the work that the City will evaluate its overall performance. Based on information gathered from the City's project management team, the Purchasing Agent will assess factors including, but not limited to, quality of work or service, completion record, job supervision, working relationship with other providers, bills for extras, organization, cooperation, worksite cleanliness, and compliance with City ordinances including W/MBE requirements. The contractor further understands and agrees that this record will be available for public scrutiny both in the project file and on the City's web site for a minimum of two years. The contractor will not contest the Purchasing Agent's scoring which will be final.

4.15 APPLICABLE LAW: This Agreement shall be construed in accordance with the laws of the State of Connecticut, the Charter and Regulations of the City of Hartford.

4.16 COMPLIANCE WITH LAW: The Contractor shall comply with all applicable laws, regulation, ordinances and codes of the United States, the State of Connecticut and the City of Hartford, and shall commit no trespass on any private property in performing any of the work embraced by this Agreement.

4.17 MEDIATION AND ARBITRATION: In the event a dispute arises out of or relates to this Contract or the breach thereof and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration.

Any dispute arising in connection with this Contract, that is not resolved or settled through mediation as referenced above shall be settled by arbitration in accordance with the rules of the American Arbitration Association. The Contractor and the City shall each choose an arbitrator, and the two arbitrators thus chosen shall select a third arbitrator. The findings and award of the three arbitrators thus chosen shall be final and binding on the parties hereto, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Arbitration shall be held in Hartford, Connecticut.

4.18 ACTION AGAINST THE CITY: No action shall lie or be maintained against the City by the Contractor or anyone claiming under the Contractor upon any claim arising out of or based upon this contract or by reason of any act or omission or requirement of the City or its agents, unless such action shall be commenced within six months after the expiration of the contract period stipulated herein; but in the event that this contract is terminated by the Purchasing Agent, pursuant to Paragraph 4.6 of this

contract, such action shall be commenced within six months after the date of such termination by the Purchasing Agent. Action to recover any monies required to be retained on this contract for a specified period shall be commenced within six months after such monies become due and payable under the terms of this contract.

4.19 NO ESTOPPEL: Neither the City, the Director of Finance, the Treasurer, nor the Purchasing Agent, shall be precluded or estopped from showing at any time either before or after the complete performance of the contract and the last payment thereunder, the actual quantity and nature of the supplies delivered by the Contractor, or any other person under the contract; or from showing at any time that any certificate upon which payment is made for any or all of the said supplies is untrue, and/or that the supplies or any part thereof delivered by the Contractor do not conform to the specifications, The City shall, in such case, have the right to demand and recover from the Contractor such damages as it may suffer by reason of its failure, to comply with the contract notwithstanding any certificate signed by the Purchasing Agent or any other official of the City , or of payments made for any or all of the supplies delivered and accepted

4.20 AMENDMENTS: The City may, from time to time, request changes in the scope of services to be performed by the Contractor hereunder. Any such change, including any increase or decrease in the amount of the Contractor's compensation , which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in a written amendment to this Contract.

4.21 CONFLICTING TERMS: The terms and conditions of the contract signed upon award of the bid will supersede any inconsistent provisions of the bidding documents.

4.22 REQUIRED PROVISIONS: Each and every provision and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though such provisions and clauses were included herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then, upon the written consent of the parties, this Contract shall forthwith be physically amended to make such insertion.

4.23 CUMULATIVE REMEDIES: All rights exercisable by and remedies of the City hereunder shall be cumulative and the exercise or beginning of the exercise by the City of any of its rights or remedies hereunder shall not preclude the City from exercising any other right or remedy granted hereunder or permitted by law.

4.24 SUCCESSORS & ASSIGNS: The City and the Contractor each binds itself and its successors and assigns with respect to all covenants of this Contract. The Contractor shall not assign or transfer any interest in this Contract without the prior written approval of the City.

4.25 INVALID PROVISIONS: If any provisions of this Contract is held invalid, the balance of the provisions of this Contract shall not be affected thereby if the balance of the provisions of the Contract would then continue to conform to the requirements of applicable laws.

4.26 NON-WAIVER: Any failure by the City or the Contractor to insist upon the strict performance by the other of any of the terms and provisions hereof shall not be a waiver, and each party hereto, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other, of any and all of the terms and provisions of the Contract and neither party hereto shall be relieved of such obligation by reason of the failure of the other to comply with or otherwise enforce or to seek to enforce any of the provisions of this Contract.

4.27 CONFLICT OF INTEREST: The Contractor warrants that it has no interest in the subject matter of this Contract and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services and duties hereunder. The Contractor further warrants that, in the performance of this Contract, no person having any such interest shall be employed by it.

The Contractor represents and warrants that it has not employed or retained any person, other than a bona fide full time salaried employee working solely for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any person (other than payment of fixed salary to a bona fide full time salaried employee working solely for the Contractor) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Contract. The Contractor

represents that no person or persons not named in the Contractor's qualification and proposal, have any financial or personal interest in the Contractor's performance hereunder.

For the breach or violation of this provision, without limiting any other rights or remedies to which the City may be entitled or any civil or criminal penalty to which any violator may be liable, the City shall have the right, in its discretion, to terminate this Contract without liability, and to deduct from the payments to be made pursuant to this Contract, or otherwise to recover the full amount of such fee, commission, percentage, gift or consideration.

4.28 NOTIFICATION: All notices of any nature referred to in this Contract shall be in writing and sent to:
As to the City: As to the Contractor:

Lydia Rosario, Procurement Manager
City of Hartford, Procurement Services
550 Main Street
Hartford, CT. 06103

Address as identified on the RFR
Response Forms or
as printed on the face of the
Purchase Order

4.29 INDEPENDENT CONTRACTOR: Contractor, including its' employees, is an independent contractor and shall not be regarded as an employee or agent of the City.

4.30 SUBCONTRACTORS: Portions of this work may be subcontracted, provided that:

- a) The City shall give prior approval to such subcontract in writing.
- b) All of the terms, covenants, conditions and provisions of this Contract shall have been incorporated in such subcontract(s) and the subcontractor(s) shall have agreed in writing to assume, perform and be bound by this Contract and all the terms, covenants, conditions and provisions hereof.
- c) The City shall not be liable for payment of any wages, materials, or other expenses of any subcontractors.

4.31 ESTABLISHMENT AND MAINTENANCE OF RECORDS: The Contractor agrees to establish and maintain fiscal control and accounting procedures which assure proper accounting for all funds paid by the City to the Contractor under this Contract. The Contractor agrees that all records with respect to all matters covered by this Contract shall be maintained during the term of this Contract, and for a minimum of three years following termination, including any renewal or extension.

4.32 AUDITS: At any time during normal business hours, and as often as may be deemed necessary, the Contractor shall make available to the City, for examination, all records with respect to all matters covered by this Contract.

4.33 REPORTS AND INFORMATION: The Contractor shall furnish the City with such information and reports concerning the progress and management of this work as may be required from time to time. The form of said reports shall be determined by the City consistent with the City's requirements.

4.34 INSPECTION: The City shall have the right to inspect Contractor's work at all reasonable times. This right of inspection is solely for the benefit of the City and does not transfer to the City the responsibility for discovering patent and latent defects. The Contractor has the sole and exclusive responsibility for delivering in accordance with the specifications, schedules and approved plans.

4.35 SAFEGUARDING OF FUNDS: In the event that the City provides the Contractor with a cash advance or makes a lump sum payment, the Contractor shall deposit all project funds in a Hartford financial institution with adequate FDIC or FSLIC coverage, and the balance exceeding the FDIC coverage shall be secure. Such security shall be satisfactory to the City. Consistent with the goal of expanding opportunities for Minority Business Enterprises, the Contractor is encouraged to use minority banks where possible.

4.36 SAVINGS CLAUSE: The Contractor shall not be liable for losses or delays in the fulfillment of the terms of the contract due to wars, acts of public enemies, strikes, fires, floods, acts of God or any other acts not within the control of or reasonably prevented by the Contractor. The Contractor will give written notice of the cause and probable duration of any such delay.

4.37 ADVERTISING: Contractors may not reference sales to the City of Hartford for advertising and promotional purposes without the prior approval of Procurement Services.

4.38 HAZARDOUS WASTE: In the event that the specified work involves the handling of hazardous waste and associated insurance coverages are not identified elsewhere in the bid documents, the contractor's insurance policy must provide Pollution Liability coverage as described in Section 4.4 Insurance Requirements.

Title to all Waste accepted by the Contractor from City for transport and disposal by the Contractor shall pass directly from the City to the Contractor at the time of such acceptance. Appropriate documents so signifying shall be signed by a representative of the Contractor. Under no circumstances shall title to such accepted Wastes be deemed to be held by the City.

The Contractor warrants that it understands the currently known hazards and suspected hazards that are presented to persons, property, and the environment by the transport, treatment, and disposal of Wastes. The Contractor further warrants that it will perform all services under this Contract in a Safe, efficient, and lawful manner using industry-accepted practices and procedures, and in full compliance with all applicable State and Federal laws and regulations.

4.39 LICENSES AND PERMITS The Contractor certifies that for the duration of contract performance, he shall have and provide proof of permits and licenses as required by the City of Hartford Department of Code Enforcement and/or other City, State or Federal regulatory bodies as applicable.

4.40 PATENT INFRINGEMENT: Contractor shall fully indemnify, save harmless and protect the City, the City's agents, and agents and employees of all of them against any loss, claim, liability, damage or expense resulting directly or indirectly from patent infringement claims arising out of Contractor's performance.

4.41 PAYMENT: Payment will be made to the Contractor within thirty (30) days after receipt by the City of acceptable monthly statements with appropriate supporting documentation. The acceptance, by the Contractor or by any person claiming under the Contractor, of the final payment as approved by the Director of Finance shall operate as and be a release to the City from all claims of and liability to the Contractor and to the Contractor's representatives and assigns for anything done, furnished for or relating to the contract or for any act or omission of the City or of any person relating to or affecting the contract except such sums as may be retained by the City under the maintenance or guarantee provisions of this contract. The City shall have the right, during the course of the Contractor's services and for a period of two years after completion of the services, to examine Contractor's records to verify all direct charges, expenses and disbursements made or incurred by Contractor in connection with the services.

4.42 NON-APPROPRIATION OF FUNDS: It is assumed that City departments that enter into an Contract with the Contractor have obtained approval, authority and funding to make the initial payment(s) during the current fiscal year. The department's ability to make subsequent payments may be contingent upon the appropriation of funds by the relevant government entity or legislative authorities of funds for this purpose. If such additional funds are not so appropriated either the Contractor or the City may terminate this contract as of the first day of the applicable subsequent fiscal year in which such funds were not made available. The City agrees not to effect such termination for the sole purpose of replacing the work product with an equivalent product supplied by others

4.43 TAXES: The City is exempt from Connecticut Sales Tax under G.S. Sect. 12-412(A), Federal excise taxes, and the provisions of the Federal Robinson-Patman Act.

In accordance with Chapter 2, Section 2-548(a)(4) of the Municipal Code of the City of Hartford, the Contractor must be current in all tax obligations to the City of Hartford. A Contractor found to be delinquent in the payment of personal or real property taxes, or found to be the owner of an interest of twenty-five percent (25%) or more in a corporation that is delinquent in the payment of personal or real property taxes shall be required to submit a plan whereby the bidder will make current all arrearage of taxes. Such plan shall include a schedule of payments sufficient to make such bidder current within a time period satisfactory to the City Manager.

4.44 WARRANTIES, GUARANTEES, & INSTRUCTIONS: Contractor warrants for itself, its subcontractors and its suppliers, that services performed shall conform to the requirements of the Contract and shall be accomplished in a workmanlike manner and, unless otherwise specified, in accordance with generally recognized and adequate practices and standards. If any services do not conform in all respects or are defective in any respect, and the City notifies Contractor within a reasonable time after discovery thereof, Contractor, at its sole expense, promptly shall correct such non-conformity or defect. This obligation of Contractor to correct non-conforming or defective services shall continue for one year after final completion of services. All warranties herein shall be assignable to any customer of the City or agent thereof intended to benefit from such services. These warranties shall survive any termination of this Contract and any acceptance or payment by the City and shall be in addition to any remedies provided by applicable law.

Contractor warrants that the merchandise supplied hereunder will be of good workmanship and material, free from defects and in accordance with specifications and if the intended use thereof has been made known to vendor that it is adequate for that intended use.

Contractor warrants that all goods and services furnished hereunder will be designed, constructed and performed so as to comply with the Williams- Steiger Occupational Safety and Health Act of 1970, as amended from time to time, and the rules, regulations and standards issued there under by any applicable governmental authority which as of the date of this Contract will apply to the goods and services furnished hereunder.

4.45 PRINTED MATERIAL: The City of Hartford has sole and exclusive right and title to all printed material and art work produced for the City and the contractor shall not copyright the printed matter produced under the contract. The original artwork and/or any plates used in preparing and completing the work shall be considered property of the City of Hartford whether supplied by or created for the City. All artwork shall be returned with the completed job. The vendor shall be responsible for the safekeeping of all printing plates, returning them to the City upon request.

4.46 ASSIGNMENT OF ANTITRUST CLAIMS: The Contractor offers and agrees to assign to the City of Hartford all of its right, title and interest in and to any and all actions or causes of action it may have under Section 4 of the Clayton Act, 15 U.S.C. Section 15, or under Chapter 624 of the Connecticut General Statutes, arising out of the purchase of services, goods, property or intangibles of any kind pursuant to a purchase order, contract, subcontract or other form of public purchase by the City of Hartford. This assignment shall be made and become effective upon award or acceptance by the City of Hartford of the bid, purchase order or contract with the Contractor without requiring any additional or further act or acknowledgment by the parties. The Contractor shall include the terms of this assignment to the City of Hartford in any contract, Contract or purchase document that it may enter into for services, goods, property or intangibles used for or incorporated into any work or materials, performed for or provided to the City of Hartford for the Work.

4.47 SECURITY: Contractor must adhere to established security and/or property entrance policies and procedures established for each requesting City entity. It is the responsibility of each subcontractor or supplier to understand and adhere to those policies and procedures prior to any attempt to enter the premises.

4.48 ENTIRE AGREEMENT: This Contract and its attachments constitute the entire understanding and Contract of the parties respecting the subject hereof and supersede any and all agreements, negotiations, commitments and writings reached by the parties prior to the execution of this Contract, whether oral or written. No change or modification of this Contract shall be valid unless it is in writing and signed by both

parties hereto.

4.49 SMOKING POLICY: No person shall smoke in any municipal or school system facility.

4.50 OTHER TERMS:

- A. Invoice and bill of lading or other notice containing complete shipping information must be mailed at time of shipment.
- B. Delivery will be inside, FOB Hartford unless otherwise stated in the specifications.
- C. City's order number must be shown on all packages, invoices and correspondence.
- D. Acknowledge agreement and advise approximate shipping date immediately upon receipt.

Acknowledgement of terms by contracting company:
(if signature is stated as required on the face of the purchase order)

Signed - _____ Date - _____

Title - _____
(duly authorized corporate officer)

Witnessed - _____ Date - _____

END OF SECTION